

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Policy Guidance Letter No. 32, Use of Corps Reservoir Flowage Easement Lands

1. Reference: ER 405-1-12, Real Estate Handbook
2. Background: The U.S. Army Corps of Engineers has received several recent requests to use and develop flowage easement lands. These requests were elevated to HQUSACE and the Assistant Secretary of the Army for Civil Works (ASA(CW)) for resolution. This prompted a policy review on use of Corps flowage easement lands. While our review has indicated that policy, taken as a whole, is adequate, we need to consolidate and clarify the existing guidance.
3. Policy: Flowage easement lands present a difficult challenge. The Corps has only purchased certain rights associated with periodic water storage on the property and does not exercise the absolute control associated with ownership in fee. Therefore, the Corps ability to plan for developing and using flowage easement lands in the master planning process is limited. Though easement provisions may vary, reference 1 sets forth the current flowage easement requirements. It provides that no structure for human habitation shall be constructed or maintained on the land, that no other structure shall be constructed or maintained on the land except as may be approved in writing by the Corps and that no excavation shall be conducted or landfill placed without Corps approval. Under the standard flowage easement the land use decisions under the purview of the District Commander are approval for structures other than for human habitation, and approval of excavations or landfill placements. Final approval authority for release of the restriction on human habitation rests with the ASA(CW). Guidance on considerations in making the land use decisions and recommendations for flowage easements is presented in the following paragraphs. This guidance applies to decisions on future land use and does not apply to corrective actions for un-permitted encroachments on flowage easement areas.
 - a. Structures Other Than For Human Habitation. Approval for structures other than for human habitation rests with the District Commander. However, to insure national and regional consistency in policy application, any approval action must be coordinated with the Major Subordinate Commander before it is finalized. The following criteria should be used for evaluating the approval of these structures on flowage easement lands.
 - (1). Compatibility with Project Operations. The structure must be compatible with project operations. Therefore, any proposal which would result in a significant increase in debris or sedimentation in the reservoir will not be approved. Any proposed structure for the production or storage of highly volatile, hazardous, toxic, or water reactive materials will not be approved.

(2). Compatibility with Floodplain Management. In accordance with the requirements of the national policies on floodplain management, any nonresidential structure (building), including such structures as barns and storage buildings, must be elevated above the 100 year floodplain or floodpool or floodproofed watertight to or above the 100 year flood level. Also the landowner must demonstrate that there is no practical alternative to location of the structure other than within the floodpool or floodplain. Certain types of development are compatible with periodic low velocity inundation including parking lots and other paved surfaces, field recreation facilities (backstops, goalpost etc.) and open type structures (picnic shelters). These kinds of developments would generally be approved unless their construction reduced the flood control storage capacity of the project or considerations of safety or property damage preclude the approval (for example, inadequate warning time to evacuate people from a recreation area).

b. Excavations or Landfills. The primary consideration in approving excavations or landfill placements is the preservation of the flood storage capacity of the project. Therefore, landfill placements will not be approved unless substitute flood storage is provided. Proposals for excavation and grading of flowage easement areas will not be approved if they result in loss of flood control storage. Approval authority for excavations and landfills rests with the District Commander. However, to insure national and regional consistency in policy application, any approval action must be coordinated with the Major Subordinate Commander before it is finalized.

c. Release from Restriction on Human Habitation. Generally, the restriction on human habitation will not be recommended for release. Human habitation below the flood control or navigation pool elevation places an undue limitation on the Congressionally authorized operation of the project. However, if it can be demonstrated that the release will not result in a significant threat to human life, health, or safety and will not place or suggest any restriction on the operation of the project, the release may be approved under certain conditions. As with other structures, such developments must meet the requirements of national policy on floodplain management as set forth in Executive Order 11988 and its implementing regulations. Executive Order 11988 requires consideration of alternatives which avoid the floodplain wherever practical. Therefore, any landowner requesting relief from the restriction on human habitation in a floodplain or project pool must also demonstrate that there is no practical alternative to the location of the habitable structure. In addition to satisfying these requirements, if there is any threat to human life, the proposal for release of the human habitation restriction will not be recommended for approval. However, if it can be demonstrated that there would be adequate warning time to evacuate the structure in the event of a flood that would inundate the site and that non-flooded egress out of the area would be available for evacuation including non-flooded egress out of the project area (offsite) then it may receive approval. Proposals for release of human habitation restriction must be submitted through the Major Subordinate Command to HQUSACE for approval by ASA(CW). The human habitation restriction is a property right acquired by the Federal Government which must be released by a deed, including the provision for adequate compensation for the disposal, in accordance

with reference 1.

4. The contents of this memorandum will be incorporated into reference 1 as that guidance is updated.

FOR THE COMMANDER:

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